

#### § 4.281

of § 4.241(a) or a copy of a notice of appeal filed pursuant to the requirements of § 4.320(b), he or she shall initiate payment of allowed claims, distribution of the estate, and all other actions required by the administrative law judge's final order.

(b) The Superintendent must not initiate the payment of claims or distribution of the estate during the pendency of proceedings under § 4.241 or § 4.242, unless the administrative law judge orders otherwise in writing. The Board may, at any time, authorize the administrative law judge to issue interim orders for payment of claims or for partial distribution during the pendency of proceedings on appeal.

[66 FR 32890, June 18, 2001; 66 FR 33740, June 25, 2001]

#### MISCELLANEOUS

##### § 4.281 Claims for attorney fees.

(a) Attorneys representing Indians in proceedings under these regulations may be allowed fees therefor by the administrative law judge. At the administrative law judge's discretion such fees may be chargeable against the interests of the party thus represented, or where appropriate, they may be taxed as a cost of administration. Petitions for allowance of fees shall be filed prior to the close of the last hearing and shall be supported by such proof as is required by the administrative law judge. In determining attorney fees, consideration shall be given to the fact that the property of the decedent is restricted or held in trust and that it is the duty of the Department to protect the rights of all parties in interest.

(b) Nothing herein shall prevent an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing an attorney's fees is subject to a petition for rehearing and to an appeal.

##### § 4.282 Guardians for incompetents.

Minors and other legal incompetents who are parties in interest shall be represented at all hearings by legally appointed guardians, or by guardians ad litem appointed by the administrative law judge.

#### 43 CFR Subtitle A (10-1-01 Edition)

##### TRIBAL PURCHASE OF INTERESTS UNDER SPECIAL STATUTES

SOURCE: 45 FR 50331, July 29, 1980, unless otherwise noted.

##### § 4.300 Authority and scope.

(a) The rules and procedures set forth in §§ 4.300 through 4.308 apply only to proceedings in Indian probate which relate to the tribal purchase of a decedent's interests in trust and restricted land as provided by:

(1) The Act of December 31, 1970 (Pub. L. 91-627; 84 Stat. 1874; 25 U.S.C. 607 (1976)), amending section 7 of the Act of August 9, 1946 (60 Stat. 968), with respect to trust or restricted land within the Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951);

(2) The Act of August 10, 1972 (Pub. L. 92-377; 86 Stat. 530), with respect to trust or restricted land within the Warm Springs Reservation or within the area ceded by the Treaty of June 25, 1855 (12 Stat. 37); and

(3) The Act of September 29, 1972 (Pub. L. 92-443; 86 Stat. 744), with respect to trust or restricted land within the Nez Perce Indian Reservation or within the area ceded by the Treaty of June 11, 1855 (12 Stat. 957).

(b)(1) In the exercise of probate authority, an administrative law judge shall determine: (i) The entitlement of a tribe to purchase a decedent's interests in trust or restricted land under the statutes; (ii) the entitlement of a surviving spouse to reserve a life estate in one-half of the surviving spouse's interests which have been purchased by a tribe; and (iii) the fair market value of such interests, including the value of any life estate reserved by a surviving spouse.

(2) In the determination under paragraph (b)(1) of this section of the entitlement of a tribe to purchase the interests of an heir or devisee, the issues of: (i) Enrollment or refusal of the tribe to enroll a specific individual and (ii) specification of blood quantum, where pertinent, shall be determined by the official tribal roll which shall be binding upon the administrative law judge. For good cause shown, the administrative law judge may stay the probate proceeding to permit an aggrieved

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party to pursue an enrollment application, grievance, or appeal through the established procedures applicable to the tribe.

### § 4.301 Appraisal report.

(a) *Order for appraisal; date for determining fair market value.* In all probates, at the earliest possible stage of the proceeding before issuance of a probate decision, when the record reveals to the Superintendent: (1) That the decedent owned interests in land located on one or more of those reservations designated in § 4.300 and (2) that any one or more of the probable heirs or devisees, who may become a distributee of such interests upon completion of the probate proceeding, is not enrolled in or does not have the required blood quantum in the tribe of the reservation where the land is located to hold such interests against a claim thereto made by the tribe, the Superintendent shall order an appraisal of the decedent's interests. If there is a surviving spouse whose interests may be subject to the tribal option, the appraisal shall include the value of a life estate based on the life of the surviving spouse in one half of such interests. The appraisal shall be made on the basis of the fair market value of the property, including fixed improvements, as of the date of decedent's death.

(b) *Who may conduct the appraisal; submission of the appraisal report to the administrative law judge.* Qualified appraisers shall appraise the property and submit an appraisal with a summary thereof to the Superintendent. The Superintendent shall file the appraisal report with the administrative law judge and retain a copy in the Superintendent's office. Interested parties may examine and copy, at their expense, the appraisal report at the office of the Superintendent or administrative law judge.

### § 4.302 Conclusion of probate and tribal exercise of statutory option.

(a) *Conclusion of probate; findings in the probate decision.* When a decedent is shown to have owned land interests in any one or more of the reservations mentioned in the statutes enumerated in § 4.300, the probate proceeding relative to the determination of heirs, ap-

proval or disapproval of a will, and the claims of creditors shall first be concluded as final for the Department in accordance with §§ 4.200 through 4.282 and §§ 4.310 through 4.323. This decision will be referred to herein as the "probate decision." At the probate hearing a finding shall be made on the record showing those interests in land, if any, which are subject to the tribal option. The finding shall be reduced to writing in the probate decision setting forth the apparent rights of the tribe as against affected heirs or devisees and the right of a surviving spouse whose interests are subject to the tribal option to reserve a life estate in one-half of such interests. If the finding is that there are no interests subject to the tribal option, the decision shall so state. A copy of the probate decision, to which shall be attached a copy of the appraisal summary, shall be distributed to all parties in interest in accordance with §§ 4.201 and 4.240.

(b) *Tribal exercise of statutory option.* A tribe may purchase all or a part of the available interests specified in the probate decision within 60 days from the date of the probate decision unless a petition for rehearing or a demand for hearing has been filed in accordance with § 4.304 or 4.305. If a petition for rehearing or a demand for hearing has been filed, a tribe may purchase all or a part of the available interests specified in the probate decision within 20 days from the date of the decision on rehearing or hearing, whichever is applicable. A tribe may not, however, claim an interest less than the decedent's total interest in any one individual tract. The tribe shall file a written notice of purchase with the Superintendent, together with the tribe's certification that copies thereof have been mailed on the same date to the administrative law judge and to the affected heirs or devisees.

Upon failure to timely file a notice of purchase, the right to distribution of all unclaimed interests shall accrue to the heirs or devisees.

[36 FR 7186, Apr. 15, 1971, as amended at 55 FR 43133, Oct. 26, 1990; 55 FR 46132, Nov. 1, 1990]